

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT VERNON WOODS,

Petitioner,

v.

TOM FELKER, Warden, et al.,

Respondents.

No. C 07-05185 CW (PR)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

Petitioner has requested appointment of counsel in this action.

The Sixth Amendment right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the exception rather than the rule by

1 limiting it to: (1) capital cases; (2) cases that turn on
2 substantial and complex procedural, legal or mixed legal and
3 factual questions; (3) cases involving uneducated or mentally or
4 physically impaired petitioners; (4) cases likely to require the
5 assistance of experts either in framing or in trying the claims;
6 (5) cases in which petitioner is in no position to investigate
7 crucial facts; and (6) factually complex cases. See generally 1 J.
8 Liebman & R. Hertz, Federal Habeas Corpus Practice and Procedure
9 § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only
10 when the circumstances of a particular case indicate that appointed
11 counsel is necessary to prevent due process violations. See
12 Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th
13 Cir. 1965).

14 The Court finds that appointment of counsel is not warranted
15 in this case. Petitioner's claims are typical claims that arise in
16 criminal appeals and are not especially complex. This is not an
17 exceptional case that would warrant representation on federal
18 habeas review. Therefore, Petitioner's motion for appointment of
19 counsel is DENIED. This denial is without prejudice to
20 reconsideration should the Court on its own motion find an
21 evidentiary hearing necessary following consideration of the merits
22 of Petitioner's claims.

23 This Order terminates Docket no. 9.

24 IT IS SO ORDERED.

25
26 Dated: 9/5/08



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROBERT VERNON WOODS,

Case Number: CV07-05185 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

WARDENS CDCR et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 5, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: September 5, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California